XVI. Taxation

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A. *Death Taxes*

In a decision of some importance to estate and compensation planners, the First District Court of Appeals in *In re Estate of Bannon*[1] held that a payment to a widow of a deceased corporate employee pursuant to the terms of his employment contract was not subject to the Indiana inheritance tax.[2] The decision is also of more general importance in that it aligns Indiana with those jurisdictions accepting the so-called "ownership" theory of death taxation and rejects the "receipt" or "succession" theory.[3]

Bannon arose on the following set of facts. In 1969, the decedent and his employer entered into a ten-year employment contract whereby the decedent was to receive $20,000 per year for the first five years of the contract period and $10,000 per year for the second five years. In the event that the employee died before the end of the contract period and was survived by his wife, the employer was to pay her $5,000 per year for the remainder of the contract period. Three years after the contract was entered into the employee died, and the employer took out an annuity payable to the widow for the remainder of the contract period.

Ruling that there was no transfer of a property interest from the decedent to his widow on the payment or obligation of payment of the annuity, the Marion Probate Court held that the annuity was non-taxable under the inheritence tax statute then in effect.[4] The court of appeals was then faced with the question of whether a taxable event took place. Making that determination required the court to first decide which general theory of death taxation was reflected in the Indiana statutory scheme and then, applying that theory to

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[1]358 N.E.2d 215 (Ind. Ct. App. 1976).

[2]Ch. 75, §§ 1, 33, 1931 Ind. Acts 192 (repealed 1976) (present Indiana inheritance tax provision now codified at IND. CODE §§ 6-4.1-1-1 to -10-6 (1976)).

[3]General discussion of the two theories may be found in Brink, *Minnesota Inheritance Tax: Some Problems and Solutions*, 43 MINN. L. REV. 443 (1959); and Meisenholder, *Taxation of Annuity Contracts Under Estate and Inheritance Taxes*, 39 MICH. L. REV. 856 (1941).

[4]358 N.E.2d at 216.

the facts, to decide whether the annuity fell within the statutory sweep.

The court had little problem in concluding that the inheritance tax statute then in effect[5] utilized the "ownership" concept. Under the "ownership" or, as it is also known, the "divestment" theory, property in which a decedent had no interest at the time of his death will not be subject to taxation when it passes to a transferee at decedent's death or upon a death-related contigency.[6] By way of contrast, the "succession" or "receipt" theory is based upon the premise that regardless whether the transferor-decedent retained an interest in property during his lifetime, if there is an enlargement of the interest of a beneficiary at the decedent-transferor's death, then there is a taxable event.[7] The court noted that the specific inclusions in the inheritance tax statute[8] involved situations where the decedent had some degree of control over the property at his death. More fundamentally, the court stated:

> [T]he "ownership" test reflects a basic distinction which underlies our inheritance tax system. The inheritance tax is directed toward transfers of property by will, by intestate succession, and by other such transfers that substitute for testamentary depositions [sic]. The death tax is not intended to apply to absolute *inter vivos* gifts.[9]

Applying that distinction, the court found that the payment of the annuity was not subject to the inheritance tax. The employment contract was such that the decedent had no interest in the annuity that became payable to his widow. In this regard, special emphasis was placed upon the fact that the decedent did not have the power to change the beneficiary and thus had relinquished his interest in the amount payable to the widow upon entering into the agreement.[10]

Because the new inheritance tax statute encompasses the same types of transfers covered in the former statute,[11] it is safe to conclude that the result in *Bannon* would have been the same had the new act been applicable. On the general point of law involved in

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[5]Ch. 75, §§ 1, 33, 1931 Ind. Acts 192 (repealed 1976).

[6]*See* Brink, *supra* note 3, at 444.

[7]*See id.*

[8]Ch. 75, § 1, 1931 Ind. Acts 192 (repealed 1976). The transfer provisions in the 1976 overhaul of the Indiana inheritance tax are codified at IND. CODE § 6-4.1-2-1 (1976).

[9]358 N.E.2d at 217.

[10]*Id.* at 218.

[11]*Compare* IND. CODE §§ 6-4.1-2-1 to -4 (1976) *with* ch. 75, § 1, 1931 Ind. Acts 192 (repealed 1976).

Bannon, Indiana inheritance tax law is now congruent with federal estate tax law, which also reflects an "ownership" theory.[12]

One of the credits applicable against a decedent's federal estate tax is for the amount of state death taxes paid.[13] The amount of death taxes imposed by most states is normally much less than the potential total credit available under the federal estate tax; accordingly, most states have enacted what are known in tax parlance as "pickup taxes."[14] Such taxes impose an additional state tax equal to the amount by which the allowable credit under the federal estate exceeds the state death taxes. The dynamic effect of such taxes is not to increase the total tax liability for a decedent's estate but is instead to allow the states to collect a higher percentage of the total tax liability of an estate.

In cases where an Indiana resident dies holding real or personal property in another state which is subject to a death transfer tax in that jurisdiction, a pickup tax provision in that state may likewise apply to effect some redistribution of the gross amount of death tax liability.[15] Such was the case in *State v. Purdue National Bank*,[16] in which the Second District Court of Appeals construed the forerunner of the present Indiana pickup tax statute.[17] In making the computation of the Indiana pickup tax under the former statute, pickup taxes paid to other states are not to be deducted from the allowable federal estate tax credit. The court noted that a parenthetical exclusion in the statute rendered it capable of no other construction.[18] The effect of the former statute, as so construed, was the imposition of state death taxes that exceeded the allowable federal estate tax credit for state death taxes in cases where an Indiana resident died holding property in another state, which itself levied a pickup tax with respect to property of a nonresident decedent.[19] The general theory of pickup taxation simply was inapplicable. The 1976 General Assembly may have rectified that theoretical anomaly in the recodification of inheritance and estate taxes, which replaced the

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[12]I.R.C. § 2036, *as amended by* Tax Reform Act of 1976, Pub. L. No. 94-555, § 2009(a), 90 Stat. 1893; I.R.C. § 2037; *id.* § 2038, *as amended by* Tax Reform Act of 1976, Pub. L. No. 94-455, § 1902(a)(3), 90 Stat. 1804, 1852.

[13]I.R.C. § 2011, *as amended by* Tax Reform Act of 1976, Pub. L. No. 94-455, § 1902(a)(12)(B), 90 Stat. 1806.

[14]*E.g.*, IND. CODE §§ 6-4.1-11-1 to -2 (1976).

[15]Indiana has such a provision for nonresident decedents who die holding Indiana property. IND. CODE § 6-4.1-11-2(b) (1976).

[16]355 N.E.2d 414 (Ind. Ct. App. 1976).

[17]Ch. 276, § 1, 1965 Ind. Acts 764 (repealed 1976) (present pickup tax statutes are codified at IND. CODE §§ 6-4.1-11-1 to -6 (1976)).

[18]355 N.E.2d at 416.

[19]*Id.*

old article 4 of title 6 of the Indiana Code with a new article 4.1.[20] The 1976 enactment was intended to be a codification and restatement of applicable or corresponding provisions of the repealed laws, without any substantive changes.[21] The new pickup tax provision, however, does not include the parenthetical exclusion upon which the *Purdue National Bank* panel seized.[22] Accordingly, it is submitted that the Indiana pickup tax is now in line with the general theory of pickup taxation.

B. *Gross Income Tax*

1. *Affiliated Corporations.*—Section 6-2-1-14(a) of the Gross Income Tax Act[23] provides that affiliated corporations "shall have the privilege of making a consolidated [gross income tax] return."[24] The statute requires that an affiliated group elect at the time of filing its first annual return whether to file on a consolidated basis.[25] Regulation 800 of the Indiana Gross Income Tax Regulations,[26] promulgated by the Department of Revenue, provided that when an affiliated group of corporations desired to file a consolidated return the group had to file an election with and receive permission from the Department prior to the filing of the first quarterly return for that year, or before filing the annual return in cases where no prior quarterly return had been filed.

The First District Court of Appeals struck down regulation 800 as exceeding the limits imposed upon the department in its rule-making capacity in *Indiana Department of State Revenue v. Sohio Petroleum Co.*[27] The court stated that regulation 800 mandated an affiliated corporation to take action to avail itself of the privilege of

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[20]Act of Feb. 18, 1976, Pub. L. No. 18, §§ 1-2, 1976 Ind. Acts 69-104 (codified at IND. CODE 6-4.1-1-1 to -12-11 (1976)).

[21]Pub. L. No. 18, § 3, 1976 Ind. Acts 104.

[22]*Compare* IND. CODE § 6-4.1-11-2(a) (1976) *with* ch. 276, § 1(a), 1965 Ind. Acts 764 (repealed 1976).

[23]The statute, IND. CODE § 6-2-1-14(a) (1976), provides in part:

> Corporations will be deemed to be affiliated within the meaning of this section if at least eighty per cent (80%) of the voting of one (1) corporation (exclusive of directors' qualifying shares, shall be owned by the other corporation. Every corporation affiliated with another, as defined above, shall be deemed to be affiliated with every corporation which is affiliated with such corporation.

[24]*Id.* One of the benefits incident to the election of filing a consolidated return is that dividends paid by one member of the affiliated corporate group to another may be eliminated from the group's gross income. *Id.* Such a provision is, of course, fair and logical in terms of gross income taxation because the taxable entity, the group, has not derived any real income.

[25]*Id.*

[26]IND. ADMIN. R. & REGS. § (6-2-1-14)-1 (Burns 1976).

[27]352 N.E.2d 95 (Ind. Ct. App. 1976).

filing a consolidated return prior to the time set in the statute.[28] The court noted that insofar as regulation 800 required an affiliated group to obtain permission to file a consolidated return in its first year, it extended the power of the department beyond that granted in the statute. By its very terms, the statute empowers the department to require prior permission only when an affiliated group, the members of which filed separate returns during the existence of the group, seeks to switch to the consolidated return format or when an affiliated group that had previously been filing on a consolidated basis seeks to have its members file separate returns.[29]

2. *Exemptions.—Sohio Petroleum* also clarified a question regarding an exemption from gross income for purposes of the Indiana Gross Income Tax. Under section 6-2-1-1(m) of the Indiana Code,[30] for nonresident individuals and Indiana corporations authorized to and doing business in other jurisdictions, gross income does not include gross receipts received from sources outside of Indiana where the receipts are derived from a trade or business located in and regularly carried on outside of Indiana. For a corporation to qualify for exemption under section 6-2-1-1(m), it must (1) be incorporated under the laws of Indiana, (2) do business in another state, and (3) derive income from sources outside of Indiana.[31]

Sohio Petroleum's predecessors in interest were Old Ben Coal Corp., a Delaware corporation having is principal executive office in Illinois; and Old Ben Coal, Inc. and Kings Mine Coal Corporation, both of which were Indiana corporations. The Delaware corporation owned all of the stock of the Indiana corporations. Although the Indiana corporations had their production facilities in Indiana, their management functions were concentrated in the Illinois office of the parent corporation. Old Ben Coal, Inc. owned one-half of the common stock of Algers, Winslow, and Western Railroad (AWW), an Indiana corporation operating in Indiana. Old Ben Coal, Inc. received dividends from AWW in 1970 and 1971 but did not report the dividends as gross income on its consolidated return. The AWW stock certificates were kept at the Illinois corporate offices; therefore, the taxpayers contended that the dividends were exempt from gross income under section 6-2-1-1(m).

The taxpayers relied on an older Indiana Supreme Court case[32] in which, on similar facts, certain intangible property was found to

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[28]IND. CODE § 6-2-1-14(a) (1976).

[29]352 N.E.2d at 98.

[30]IND. CODE § 6-2-1-1(m) (1976).

[31]Indiana Dep't of Revenue v. Frank Purcell Walnut Lumber Co., 152 Ind. App. 122, 128, 282 N.E.2d 336, 340 (1970).

[32]Miami Coal Co. v. Fox, 203 Ind. 99, 176 N.E. 11 (1931).

be so intertwined and affixed to the corporate taxpayer's Chicago office that its "business situs" was in Illinois. That court had concluded that the intangible property came within the operation of the concept that a state cannot impose its personal property tax upon the value of personal property situated outside of that jurisdiction.[33] The Department of Revenue incorporated the personal property tax business situs rule into its gross income tax regulations.[34]

In *Sohio Petroleum*, the court of appeals preserved the conceptual distinction between income and property taxes and refused to apply the portions of the gross income tax instructions incorporating the business situs rule.[35] The court stated that the determinative factor for qualification under the exemption in section 6-2-1-1(m) is the location of the corporation that pays dividends on stock held by an Indiana corporation at its out-of-state principal place of business.

3. Ad Valorem Taxes.—(a) Property Tax Disaster Reassessment.—Indiana Code section 6-1-26-7[36] provides that in case of a disaster that destroys a substantial amount of property within any township, the State Board of Tax Commissioners shall have the area where the losses occurred surveyed and shall order a reassessment of the property. The disaster reassessment procedure is actuated by petition of taxpayers suffering damage by reason of disaster and applies to both real and personal property.

Indiana State Board of Tax Commissioners v. Holthouse Realty Corp.[37] considered the state's position that the disaster reassessment provision did not apply to taxpayers whose losses had been fully compensated by proceeds from insurance policies. The case arose on the following set of facts. Substantial amounts of property were destroyed by an explosion in Richmond in 1968. Approximately seven months later, several taxpayers petitioned for reassessment of personal property pursuant to section 6-1-26-7 and improvements to real estate that had been damaged by the explosion. In eary 1971, the State Board of Tax Commissioners issued an order that approved certain petitions for reassessment but denied reassessments for those taxpayers whose losses had been fully compensated by insurance proceeds. In 1972, the aggrieved taxpayers filed their action

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[33]*Id.* at 114-15, 76 N.E. at 17.

[34]IND. DEP'T OF REV. INSTRUCTIONS 3-11, 3-12.

[35]In this regard, the court relied upon Baker v. Compton, 247 Ind. 39, 211 N.E.2d 162 (1965), which held that an appellate court is not required to follow an incorrect interpretation of a statute by an agency charged with administering the statute, notwithstanding the axiom that a court should give deference to agency interpretations. 352 N.E.2d at 101.

[36]IND. CODE § 6-1-26-7 (1976).

[37]352 N.E.2d 535 (Ind. Ct. App. 1976).

for review.[38] Two years later the trial court entered judgment for the taxpayers, finding that the statute did not except situations where insurance covered the loss.[39] The trial court noted that there was no reason to penalize those prudent enough to insure their property by excepting them from the statutory relief, and if the legislature had so intended, it would have so provided.[40]

After disposing of collateral issues,[41] Judge Lowdermilk's opinion for the First District Court of Appeals set forth the "crucial issue" as being whether the legislature intended to deny statutory relief to taxpayers who have recovered insurance proceeds on property losses. Focusing on the mandatory language of the statute, the court found no need to construe the statute.[42] The clear purpose of the statute being to provide relief in the form of a revaluation of the damaged property and the attendant lesser tax burden, the court was at a loss to see how the incidence of insurance would affect that purpose. The court noted that the statute was designed to provide relief to all taxpayers adversely affected within the meaning of the statute and not to award compensation on account of losses. Accordingly, the state's argument was rejected, and the statute was given its intended full scope of coverage.

(b) Valuation of Commingled Fungible Goods. — The Indiana Constitution provides: "The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation; and shall prescribe regulations to secure a just valuation for taxation of all property . . . ."[43] The Third District Court of Appeals had occasion to apply that constitutional provision in *Indiana State Board of Tax Commissioners v. Lyon & Greenleaf Co.*[44] The case concerned the 1969 personal property tax return of Lyon & Greenleaf, a federally licensed grain warehouse that stored raw wheat belonging to farmers, other grain elevators, and itself. The raw wheat was kept in common storage facilities in such a manner that wheat belonging to Lyon & Greenleaf was indistinguishable from the

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[38]At that time review was pursuant to ch. 231, § 1, 1963 Ind. Acts 317 (repealed 1975) (present review provision codified at IND. CODE § 6-1.1-15-5 (1976)).

[39]352 N.E.2d at 537.

[40]*Id.*

[41]The court of appeals had little trouble in finding that there was substantial evidence to support the finding that the board did not order reassessment of the aggrieved taxpayers property pursuant to ch. 107, § 1, 1969 Ind. Acts 249 (repealed 1976) (current version at IND. CODE § 6-1.1-4-11 (1976)). The trial court's finding that prudent taxpayers carry insurance was found to be erroneous inasmuch as the record contained no evidence to support such a finding. That error was found to be "harmless error" under IND. R. TR. P. 61, making reversal unwarranted. 352 N.E.2d at 538.

[42]352 N.E.2d at 539.

[43]IND. CONST. art. 10, § 1.

[44]359 N.E.2d 931 (Ind. Ct. App. 1977).

wheat that it held as a warehouseman. An audit of the 1969 return resulted in a recommendation to the State Board of Tax Commissioners that the assessed valuation of Lyon & Greenleaf's business personal property be more than tripled. Lyon & Greenleaf invoked the then applicable review procedure following the Board's issuance of its "Notice of Assessment."[45]

Lyon & Greenleaf based its assessment on a "true cash value" basis, obtaining the value from the State Board of Tax Commissioners' Bullentin No. 9, entitled "Assessment of Farm Livestock and Commodities for the Year 1969." The board sought to have the property assessed as inventory because Bulletin No. 9 provided: "All livestock, grain or other farm commodities held, possessed or controlled by a dealer or manufacturer shall be assessed as inventory . . . ."[46] The lower of actual or current replacement cost was to provide the value for inventory. On review of the reassessment, the trial court found that the effect of using two different bases—one for the assessment of raw wheat belonging to warehousemen and one for the assessment of raw wheat belonging to farmers—was to assess identical commingled raw wheat held in the same storage facility at differing rates depending upon who owned the wheat. That court ruled that the administrative standard, which resulted in values for commingled wheat that differed solely on the basis of ownership, constituted an unreasonable classification in violation of article 10, section 1 of the Indiana Constitution.[47]

In affirming the trial court, the court of appeals began its analysis with an examination of the factors that form the constitutional basis of a valid tax law. Those factors, derived from article 10, section 1 of the Indiana Constitution, are (1) uniformity and equality in taxation, (2) uniformity and equality as to rate of taxation, and (3) a just valuation for taxation of all property.[48] The court stated that the purpose of the three requirements is to distribute the burden of taxation on principles of uniformity, equality, and justice. As the case turned on the "classification" question, the court noted that Indiana case law[49] recognizes that different classes of property may be

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[45]The procedure for review of reassessments applicable at the time the dispute in the instant case arose may be found at ch. 231, § 1, 1963 Ind. Acts 317 (repealed 1975) (procedure for judicial review of final determinations of the State Board of Tax Commissioners now applicable is codified at IND. CODE § 6-1.1-15-5 (1976)).

[46]359 N.E.2d at 933.

[47]*Id.*

[48]Wright v. Steers, 242 Ind. 582, 179 N.E.2d 721 (1962), and Finney v. Johnson, 242 Ind. 465, 179 N.E.2d 718 (1962), were cited by the *Lyon & Greenleaf* court as establishing the constitutional bases of a valid tax law. 359 N.E.2d at 933.

[49]*See* Smith v. Stephens, 173 Ind. 564, 91 N.E. 167 (1910); Board of Comm'rs v. Johnson, 173 Ind. 76, 89 N.E. 590 (1909); Clark v. Vandalia R.R., 172 Ind. 409, 86 N.E. 851 (1909); State *ex rel.* Lewis v. Smith, 158 Ind. 543, 63 N.E. 25 (1902).

necessary in order to achieve a just and uniform taxation. However, such classifications are permissible only when used to achieve uniformity and equality in result,[50] and they must be based upon differences naturally inhering in the subject matter of the legislation.[51]

The Board's argument to the court was that a uniform basis of valuation (actual cost) was applied, and that the difference in assessed values under the regulatory schemes was due to differences in cost to the farmer, who presumptively had grown the wheat, and the warehouseman, who presumptively had acquired the wheat by sale or exchange. Uniformity in valuation method, however, is not one of the constitutional prescriptions for a valid tax law;[52] instead, as the court noted, the constitution requires a system that will provide a just valuation of all property.[53] The court recognized that cost was an appropriate factor to weigh in arriving at a just valuation, but that cost, in itself, is not a condition sufficient to meet the constitutional standard.[54]

Without setting forth any broad standard of general application for determining what constitutes a "just valuation," the court struck down the valuation system at issue in *Lyon & Greenleaf* because it placed an artificial distinction on the value of raw wheat. To the court, "[t]he resulting inequities of a system which places differing values on a fungible commodity commingled in the same storage facility are too great to warrant a valuation under such method."[55] *Lyon & Greenleaf* does, however, clearly establish as part of Indiana constitutional tax law the somewhat self-evident proposition that identical property must be assessed at the same tax value.

(c) Commerce Clause Exemption—In *Indiana State Board of Tax Commissioners v. Philco-Ford Corp.*,[56] the First District Court of Appeals upheld a denial of a property tax exemption that Philco-Ford had claimed under the commerce clause exemption to state ad valorem taxes.[57] The case arose on the following set of facts. Philco-

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[50]359 N.E.2d at 934.

[51]*Id.* (citing State *ex rel.* Lewis v. Smith, 158 Ind. 543, 580, 64 N.E. 18, 20 (1902)).

[52]*See* Wright v. Steers, 242 Ind. 582, 179 N.E.2d 721 (1962); Finney v. Johnson, 242 Ind. 465, 179 N.E.2d 718 (1962).

[53]*See* Louisville & New Albany R.R. v. State *ex rel.* McCarty, 25 Ind. 177 (1865).

[54]359 N.E.2d at 934.

[55]*Id.* at 935.

[56]356 N.E.2d 1379 (Ind. Ct. App. 1976).

[57]The exemption claimed by Philco-Ford was permitted by ch. 398, § 2, 1965 Ind. Acts 1244 (repealed 1975) (current version codified at IND. CODE § 6-1.1-10-30 (1976)). That statute provided, in pertinent part:

> [P]ersonal property of residents or nonresidents of the state placed in the original package in a public or private warehouse for the purpose of transshipment to an out-of-state destination and so designated on the original bill of lading, shall not, while so in the original package in such warehouse,

Ford owned certain appliances that were manufactured at its Connersville, Indiana plant and then shipped by rail and truck to a warehouse in Muncie, Indiana. The appliances were stored in their original packages, and those that had been shipped by rail were covered by bills of lading listing Muncie as their destination but were further marked, "for storage in transit to an out of state des[tination]." Because shipments out of the warehouse were controlled by Philco-Ford's Philadelphia office, which would draw a new bill of lading to cover outgoing items, and because the outgoing shipments generally were pulled from the entire warehouse stock, the lower court recognized that there was no correlation between the number of appliances stored with the original "out of state" bills and the number of appliances that actually reached out of state destinations, even though Philco-Ford intended to put most of its appliances into interstate commerce.[58] Philco-Ford claimed exemptions on its property tax returns for the appliances covered by the original bills of lading.[59]

On appeal, Judge Lowdermilk stated that the appliances did not move into the stream of interstate commerce until they were shipped or actually committed for shipment to an out of state location. Shipment of the goods and storage of the goods in the Muncie warehouse were held to be preparations for entry into the stream of interstate commerce because some of the goods could have been—and indeed some were—sold or otherwise disposed of in Indiana.[60] Because the statutory exemption is limited to the compass of the commerce clause, the court upheld the board's denial of the claimed exemption.[61]

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be subject to tax imposed by this act. . . . In construing this action, goods, wares, and merchandise shall be exempt only to the extent that they are exempt from ad valorem taxes under the commerce clause of the Constitution of the United States.

[58]356 N.E.2d at 1381. Some of the appliances obviously were transmitted to Indiana destinations.

[59]The Board of Tax Commissioners denied the exemptions, but, on review, the Delaware Superior Court found that the warehouse storage was part of the movement in interstate commerce and concluded that the board acted arbitrarily and capriciously in denying the exemptions. *Id.*

[60]The court relied upon Minnesota v. Blasius, 290 U.S. 1, 12 (1933), in which the Court ruled that property is subject to the taxing power of the states when it has come to rest within a state and may be disposed of at the pleasure of its owner either within or without that state.

[61]The court also rejected Philco-Ford's contention that the claimed exemption in their case was controlled by a case from the previous year that was based upon similar facts, Whirlpool Corp. v. State Bd. of Tax Comm'rs, 338 N.E.2d 501 (Ind. Ct. App. 1975), *noted in* Allington, *Taxation, 1976 Survey of Recent Developments in Indiana Law,* 10 IND. L. REV. 340, 358 (1976), because the result in *Whirlpool* was based on an acquiescence theory which had no application to the issues in *Philco-Ford.* Further-

4. Sales Taxes.—In *Indiana Department of State Revenue v. Associated Beverage Co.*,[62] the First District Court of Appeals held that a manufacturer who purchases empty bottles for the purpose of filling them with its product, in order to sell its bottled product to the public, purchases the bottles for resale and not for its own use. Therefore, such purchases are exempt from state gross retail (sales) tax under the resale exemption.[63]

Another exemption to the state sales tax is extended to the sale, storage, use, or other consumption in Indiana of tangible personal property or service that is directly consumed in the rendering of public transportation of persons or property.[64] In *Indiana Department of State Revenue v. Indianapolis Transit System, Inc.*,[65] the First District Court of Appeals found that the foregoing exemption applied to a city's charter bus service. In so ruling, the court rejected the department's argument that the bus charters were leases of tangible personal property and therefore subject to tax under Indiana Code section 6-2-1-38(1),[66] which makes leases by all persons except public utilities subject to tax. Deciding whether the charter system created a lessor-lessee relationship was a question of fact dependent upon possession and right to control.[67] The indicia of a lease were found not to be present as the court recognized a distinction between charters and leases.[68]

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more, the court rejected Philco-Ford's claim that a regulation exempted the property from tax. The regulation, STATE BOARD OF TAX COMMISSIONERS REGULATION NO. 16 (1966), however, stated in § 1.7 that it was not to be extended to provide exemptions beyond those required by the commerce clause. Additionally, the court noted that Philco-Ford had failed to satisfy § 1.6 of the regulation, which defined the statutory term "original package." That definition required the original bill of lading to include a designation that the package is committed for transshipment to an out of state destination. The court stated that Philco-Ford had failed to satisfy the requirements in that the original bills of lading did not commit the appliances to definite out of state locations but instead listed Muncie as their destination with the additional designation, "for storage in transit to an out of state des." 356 N.E.2d 1382-83.

In light of the court's focus in *Philco-Ford*, the practical reading of the case calls for strict compliance with the statute and the departmental regulations in order to assure coverage under the exemption.

[62]353 N.E.2d 544 (Ind. Ct. App. 1976).

[63]IND. CODE § 6-2-1-39(b)(9) (1976).

[64]*Id.* § 6-2-1-39(b)(4).

[65]356 N.E.2d 1204 (Ind. Ct. App. 1976).

[66]IND. CODE § 6-2-1-38(l) (1976).

[67]356 N.E.2d at 1209-10. In regard to the right to control question, the court enumerated the following factors, gleaned from an Oregon case, Thomas v. Foglio, 225 Ore. 540, 358 P.2d 1066 (1961), as helpful in resolving the issue: (1) employment of the driver, (2) right to direct movement of the bus, (3) obligation to pay costs and repairs, (4) obligation to pay fuel costs, (5) responsibility of garaging the vehicle, and (6) payment of insurance and license fees.

[68]356 N.E.2d at 1210.

5. *Tax Procedure—The Federal Tax Injunction Act.*—There is a longstanding federal judicial policy against interfering in matters of state taxation.[69] That policy has been codified in the Tax Injunction Act of 1937,[70] which precludes federal district courts from enjoining, restraining, or suspending the assessment, levy, or collection of a state tax in cases "where a plain, speedy and efficient remedy may be had in the courts of such State."[71] The effect of the Act is to divest the district courts of jurisdiction over claims for equitable relief against state taxing authorities when the aggrieved taxpayer has a "plain, speedy and efficient remedy" in his state judicial system.[72] The fact that an aggrieved taxpayer brings his claim under the Civil Rights Act of 1871[73] does not affect application of the Tax Injunction Act;[74] and contrary to the general rule of not requiring exhaustion of state remedies in section 1983 cases,[75] when the Tax Injunction Act is applicable all available state administrative and judicial remedies must be exhausted before a federal court may entertain a section 1983 claim based upon state tax law.[76]

As Chief Judge Eschbach stated in *Green v. Klinkofe*,[77] the central issue in a case where the Tax Injunction Act is called into question is whether the state courts provide "a plain, speedy and efficient remedy" to the aggrieved taxpayer. In *Green*, the United States District Court for the Northern District of Indiana had occa-

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[69]*See* Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943); First Nat'l Bank v. Board of County Comm'rs, 264 U.S. 450 (1924).

[70]28 U.S.C. § 1341 (1970).

[71]*Id.*

[72]In other words, when applicable, the Tax Injunction Act effectively ousts a federal court of jurisdiction and mandatorily forecloses the court from granting relief. Kimmey v. H.A. Berkheimer, Inc., 376 F. Supp. 49, 53 (E.D. Pa. 1974), *aff'd*, 511 F.2d 1394 (3d Cir. 1975).

The jurisdictional bar of the Tax Injunction Act has been construed to apply to actions for declaratory relief as well as to actions for equitable relief. *See* 28 East Jackson Enterprises, Inc. v. Cullerton, 523 F.2d 439 (7th Cir. 1975), *cert. denied*, 423 U.S. 1073 (1976); Aluminum Co. of America v. Department of Treasury, 522 F.2d 1120 (6th Cir. 1975); Gray v. Morgan, 371 F.2d 172 (7th Cir. 1966), *cert. denied*, 386 U.S. 1033 (1967); City of Houston v. Standard-Triumph Motor Co., 347 F.2d 194 (5th Cir. 1965), *cert. denied*, 382 U.S. 974 (1966).

[73]42 U.S.C. § 1983 (1970).

[74]*See, e.g.*, Hickman v. Wujick, 488 F.2d 875 (2d Cir. 1973); Bland v. McHann, 463 F.2d 21 (5th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973); Gray v. Morgan, 371 F.2d 172 (7th Cir. 1966), *cert. denied*, 386 U.S. 1033 (1967).

[75]*See* McNeese v. Board. of Educ., 373 U.S. 668 (1963). *See generally* Note, *Exhaustion of State Administrative Remedies Under the Civil Rights Act*, 8 IND. L. REV. 565 (1975).

[76]*See, e.g.*, Northern Natural Gas Co. v. Wilson, 340 F. Supp. 1126 (D. Kan. 1971), *aff'd*, 405 U.S. 949 (1972); Delaware, Lackawanna & W. R.R. v. Kingsley, 189 F. Supp. 39 (D.N.J. 1960).

[77]422 F. Supp. 1021 (N.D. Ind. 1976).

sion to consider the adequacy of the state remedy vis-a-vis taxpayers aggrieved by the provisions of the Indiana Gross Income Tax Act, which authorize tax collectors to levy upon the property of delinquent taxpayers without a prior adjudication of tax liability.[78] Plaintiff contended the provisions violated his fourteenth amendment rights to due process and equal protection and sought equitable and declaratory relief.[79] In Indiana, the exclusive statutory method of obtaining review of tax assessment is through payment of the tax and a claim for refund.[80] The Indiana Administrative Adjudication Act excepts decisions of the Department of Revenue and the State Board of Tax Commissioners from its general review provisions.[81]

The plaintiff contended that he was indigent and unable to pay the tax and to invoke the statutory refund procedure. In a similar situation where an Illinois taxpayer was unable to pay the tax due, the Seventh Circuit ruled that the Illinois refund procedure[82] was unavailable.[83] If the analysis ended at that point, the jurisdictional bar of the Tax Injunction Act would have been inapplicable because plaintiff would not have had "a plain, speedy and efficient" state remedy through which he could raise his constitutional claim. The court, however, looked to the Indiana state courts to determine whether they had jurisdiction to hear the civil rights claim and grant the relief sought. Although the court noted that no reported decisions recognized that a federal civil rights claim pursuant to 42

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[78]IND. CODE § 6-2-1-18 (1976).

[79]The case arose on the following set of facts. Plaintiff was an Allen County resident who had failed to pay an alleged gross income tax assessment. Plaintiff alleged that he was unable to pay the tax. The defendants were the administrator of the Gross Income Tax Division of the State Department of Revenue, the Division itself, the Sheriff of Allen County, and the Clerk of Allen County. Plaintiff alleged that the Department of Revenue issued two collection warrants against him pursuant to IND. CODE § 6-2-1-18(b) (1976), which were subsequently filed with the Allen County Clerk and entered into the judgment docket of the circuit court of that county. Under the statute, the sheriff is directed to levy upon any property of the delinquent taxpayer once the warrant is entered in the record. *Id.*

Because such actions were authorized to be taken without any kind of hearing, plaintiff challenged the statute on procedural due process grounds. He further contended it violated the equal protection clause in that tax debtors to the state, unlike debtors to private parties, are denied a hearing prior to the entry of judgment. Making the requisite claims of irreparable injury and inadequate remedy at law, plaintiff sought declaratory and injunctive relief against the statute and its enforcement. 422 F. Supp. at 1023-24.

[80]IND. CODE § 6-2-1-19 (1976).

[81]*Id.* § 4-22-1-2.

[82]ILL. ANN. STAT., ch. 120, § 675 (Smith-Hurd Supp. 1975-1976).

[83]28 East Jackson Enterprises, Inc. v. Cullerton, 523 F.2d 439, 441 (7th Cir. 1975), *cert. denied*, 423 U.S. 1073 (1976).

U.S.C. § 1983 could be brought in the state courts,[84] it noted that there is concurrent state and federal jurisdiction over section 1983 claims[85] and concluded that "[i]n view of the 'harmonious relation' which exists between the state and federal courts," Indiana courts would entertain plaintiff's federal constitutional claim.[86] The court stated that an Indiana court may enjoin a statutory scheme made exclusive where the scheme itself violates due process.[87] Thus, plaintiff had a state remedy sufficient to invoke the jurisdictional bar of the Tax Injunction Act.

In an unreported decision,[88] the United States District Court for the Southern District of Indiana ruled that the statutory procedure for review of assessment of the value of tangible personal property[89] as supplemented by standard appellate review provisions[90] provided "a plain, speedy and efficient remedy" for a taxpayer claiming denial of equal protection in personal property tax assessments.

C. Legislative Developments

During the survey period, thirty-eight public laws were enacted under title 6 of the Indiana Code. Thirty-one of the laws were enacted during the First Regular Session of the 100th General Assembly, and seven of the laws were passed during the Special Session of the 100th General Assembly on May 23, 1977. Although many of the new laws are of only narrow specialized interest,[91] or

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[84]422 F. Supp. at 1026.

[85]*Id.* at 1026 n.12 (citing Davis v. Towe, 379 F. Supp. 536 (E.D. Va. 1974); Luker v. Nelson, 341 F. Supp. 111 (N.D. Ill. 1972)).

[86]422 F. Supp. at 1026 (quoting Bowles v. Heckman, 224 Ind. 46, 55, 64 N.E.2d 660, 663 (1946)).

[87]*Id.* at 1027.

[88]Sacks Brothers Loan Co. v. Cunningham, No. IP 77-140-C (S.D. Ind. May 13, 1977).

[89]IND. CODE § 6-1.1-15-1-13 (1976).

[90]The final administrative determination by the State Board of Tax Commissioners is reviewable by the circuit or superior court of the county in which the property is located. *Id.* § 6-1.1-15-5. The decision of the circuit or superior court is reviewable by the Indiana Court of Appeals, IND. R. APP. P. 4, and, on transfer, by the Indiana Supreme Court, IND. R. APP. P. 11. Should there be a result adverse to the taxpayer in the highest state court and should federal constitutional issues be implicated in that result, resort may then be had in the United States Supreme Court by appeal or by certiorari, as the case may be. 28 U.S.C. § 1257(2), (3) (1970).

[91]*E.g.*, IND. CODE § 6-1.1-36-7 (Supp. 1977) (State Board of Tax Commissioners may compromise the amount of property taxes, interest, and penalties assessed against a bankrupt railroad); *id.* § 6-5-8-7 (savings and loan association excise tax to be distributed on the basis of deposits to all taxing districts in which the association has offices); *id.* § 6-6-6.5-21 (aircraft excise tax collected in Allen County allocated to county board of aviation commissioners aviation fund); *id.* §§ 6-7-1-28.1 to -32.1 (cigarette tax distribution formula); *id.* § 6-9-1-5 (St. Joseph County hotel and tourist camp tax in-

are of no real significance to tax law in general,[92] most of the new acts are comment worthy, either merely to alert the reader to their existence or to highlight the provisions of the new laws under their various subject matters.

Of general note, the legislature repealed the Multistate Tax Compact.[93] The intangibles tax law was recodified without substantive change in a new article 5.1 of title 6.[94] The County Adjusted Gross Income Tax Law was amended so as to provide a new levy limit on ad valorem property taxes for counties utilizing an adjusted gross income tax in the budget year when such tax is repealed.[95] The former requirement that a County Adjusted Gross Income Tax be effective for four full years before it could be rescinded was repealed and replaced by a new rescission procedure providing that such a tax may be rescinded in the first six calendar months of a year.[96] Now, in the year of rescission, calendar basis taxpayers are to pay one-half of the tax that would have been due for a full year, and fiscal year taxpayers are to pay a pro rata share of the tax that would have been due but for the rescission.[97] The retirement income credit against county adjusted gross income taxation was reworded to conform to the language of section 37 of the Internal Revenue Code.[98]

The legislature also undertook a relatively comprehensive overhaul of the taxation and registration laws applicable to aircraft in Indiana.[99] One of the provisions of the 1977 Act made occasional sales of registered aircraft subject to the state sales tax.[100] A new valuation system based upon age and classification was enacted.[101]

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creased to 5%); *id.* §§ 6-9-3-1, -4 (Clark, Floyd, Monroe, Knox, and Marion County hotel-motel taxes); *id.* §§ 6-1.1-19-1 to -2 (amending Pub. L. No. 47, § 1, 1975 Ind. Acts 385) (manner of computing school corporation property tax levies modified).

[92]*E.g.*, IND. CODE §§ 9-7-5.5-1 to -10 (Supp. 1977) (personalized license plates); *id.* §§ 6-7-1-12, -28.1; 7.1-4-3-1 (excise taxes on cigarettes and liquor increased to help fund police and firemen's pension funds).

[93]Pub. L. No. 90, § 1, 1977 Ind. Acts 467 (repealing IND. CODE §§ 6-8-9-101 to -1307 (1976)). The Supreme Court recently upheld the constitutionality of the Multistate Tax Compact under the compact clause, U.S. CONST. art. I, § 10, cl. 3; the commerce clause, *id.* § 8, cl. 3; and the fourteenth amendment, *id.* amend. XIV. United States Steel Corp. v. Multistate Tax Comm'n, 46 U.S.L.W. 4115 (U.S. Feb. 21, 1978), *aff'g*, 417 F. Supp. 795 (S.D.N.Y. 1976) (3-judge court).

[94]IND. CODE §§ 6-5.1-1-1 to -9 (Supp. 1977) (previously codified at *id.* §§ 6-5-1-1 to -5-1 (1976)).

[95]*Id.* §§ 6-3-3.1-1 to -5 (amending *id.* §§ 6-3.5-1-1 to -12 (1976)).

[96]*Id.* §§ 6-3.5-1-6(a) (repealing *id.* § 6-3.5-1-6 (1976)).

[97]*Id.* § 6-3.5-1-6(b), (c).

[98]*Id.* § 6-3.5-1-2 (amending *id.* § 6-3.5-1-2 (1976)).

[99]Pub. L. No. 87, 1977 Ind. Acts 438 (codified in scattered sections of IND. CODE §§ 6-6-6.5-, 6-2-1- (Supp. 1977)).

[100]IND. CODE § 6-2-1-38(q) (Supp. 1977).

[101]*Id.* § 6-6-6.5-13.

The number of classes of aircraft was increased from two—piston-driven, and non-pressurized and other—to four.[102] Also of general note is Public Law Number 82,[103] wherein the legislature engrafted provisions of the Adjusted Gross Income Tax Act[104]—those dealing with auditing of returns, assessment and collection of tax liability, examination of taxpayer books and records, refunds, statutes of limitation, hearings, legal proceedings, maintenance of records by the Department of Revenue, and confidentiality of returns—onto the Occupation Income Tax Act.[105]

1. *Death Taxes.*—Only one bill was enacted into law during the survey period that directly affects state death taxation.[106] Although much of the new law worked mere technical, language-oriented changes on previously existing statutes,[107] several of the sections enacted substantive changes in the law worthy of a deeper canvass. The inheritance tax exemption for property interests transferred to a surviving spouse was increased from $15,000 to $60,000,[108] while the inheritance tax rates for property transferred to Class B and C transferees were increased.[109] The new law also extended to county assessors the power to consent to the transfer of personal property belonging to a resident decedent.[110] Formerly, that power rested exclusively with the Department of Revenue.[111] The same section of the law mandates the Department of Revenue to notify the county assessor of the county in which a resident decedent dies of any consent to transfer that it issues.[112] The safety box inventory statute was streamlined by one section of the new law;[113] the same section also added a new provision requiring life insurance companies to notify the Department of Revenue within ten days after life insurance proceeds are paid to a resident decedent's estate.[114] The new law also relieved personal representatives of the requirement of at-

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[102]*Id.* § 6-6-6.5-13(a) The new classes are: (A) Piston-driven, (B) Piston-driven, and Pressurized, (C) Turbine driven or other powered, and (D) Home-built, Gliders, or Hot Air Balloons.

[103]Pub. L. No. 82, 1977 Ind. Acts 413 (codified at IND. CODE §§ 6-3.5-3-11.5, -14 (Supp. 1977)).

[104]IND. CODE §§ 6-3-1-1 to -7-3 (1976).

[105]*Id.* § 6-3.5-3-11.5 (Supp. 1977) (amending *id.* §§ 6-3.5-3-1 to -13 (1976)).

[106]Pub. L. No. 6, 1977 Ind. Acts 87 (Special Sess.) (codified in scattered sections of IND. CODE § 6-4.1- (Supp. 1977)).

[107]*E.g.*, IND. CODE §§ 6-4.1-1-4, -4-1, -4-7, -12-1 (Supp. 1977).

[108]*Id.* § 6-4.1-3-8.

[109]*Id.* § 6-4.1-5-1(c), (d).

[110]*Id.* § 6-4.1-8-4(a), (b).

[111]*See, id.* § 6-4.1-8-4 (1976) (amended 1977).

[112]*Id.* § 6-4.1-8-4(d) (Supp. 1977).

[113]*Id.* § 6-4.1-8-5(a), (c) (amending *id.* § 6-4.1-8-5 (1976)).

[114]*Id.* § 6-4.1-8-5(b).

taching an inheritance tax receipt to their final report before approval of final accounting and discharge for personal tax liability in cases where the probate court having jurisdiction over the estate finds that no inheritance tax return statement is needed.[115]

2. Gross Income Tax and Adjusted Gross Income Tax.—The Adjusted Gross Income Tax Act was amended to permit a deduction for individual taxpayers for the amount of income taxes paid to political subdivisions of other states.[116] Military retirement income will receive new adjusted gross income tax treatment under a new deduction or credit alternative. The first $2,000 of an individual's or surviving spouse's income received on account of military service may be deducted from adjusted gross income provided that the taxpayer is sixty years old on the last day of the applicable tax year.[117] The alternative to the deduction is found in the newly restated retirement income credit against the adjusted gross income tax.[118] The new statute incorporates the retirement income credit found in section 37 of the Internal Revenue Code and allows a credit equal to the lesser of two-fifteenths of the federal credit or the remainder of total adjusted gross income taxes less the credit allowable for taxes paid to other states. The new military retirement income deductions are not available to a taxpayer who opts for the general retirement income credit against the adjusted gross income tax referred to above.[119] Taxpayers over sixty-two years of age who receive federal civil service annuities were also extended an adjusted gross income tax deduction by the 1977 General Assembly. The deduction is equal to the remainder of the first $2,000 of federal civil service annuities received and includible in gross income for federal income tax purposes under section 62 of the Internal Revenue Code less the total amount of social security and railroad retirement benefits received.[120] The deduction is unavailable to taxpayers who utilize the general retirement income credit against the adjusted gross income tax.[121]

The definition of "gross income"[122] was altered by the legislature in several narrow aspects.[123] Perhaps the most significant of the

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[115] *Id.* § 6-4.1-9-13.

[116] *Id.* § 6-3-1-3.5(a)(5) (amending *id.* §§ 6-3-1-1 to -7-3 (1976)).

[117] *Id.* § 6-3-2-4. A repealed statute, ch. 355, § 1, 1967 Ind. Acts 1327 (repealed 1977), provided that the Adjusted Gross Income Tax Act did not apply to the first $2,000 of compensation received for military service in much the same fashion as the new military retirement income deduction.

[118] IND. CODE § 6-3-3-4.1 (Supp. 1977).

[119] *Id.* § 6-3-2-4.

[120] *Id.* § 6-3-2-3.7.

[121] *Id.*

[122] *Id.* § 6-2-1-1 (1976) (amended 1977).

[123] *Id.* § 6-2-1-1 (Supp. 1977).

definitional changes is the provision that excludes the following from gross income:

> the gross receipt represented by the value of stocks, bonds, or other securities received in a reciprocal exchange by and between the owners thereof of substantially all of the assets of another corporation, where such exchange is made in the course of a consolidation, merger, or other reorganization and the stocks, bonds, or other securities received in exchange are issued by one (1) or more corporations or associations, each of which is a party to the reorganization.[124]

Also, excluded from gross income for real estate brokers is that part of a commission paid to a cooperating or associated broker or an associated salesperson within five days of the receipt of the gross commission.[125]

The definition of "adjusted gross income" was altered in two particulars by the 1977 General Assembly. For individuals, adjusted gross income for purposes of the Indiana tax now means adjusted gross income as defined in section 62 of the Internal Revenue Code but with some modifications added on by the state statute. The modifications added require the individual taxpayer to: (1) add to his adjusted federal gross income an amount equal to the total of the ordinary income portion of a lump sum distribution from a qualified pension plan under the provisions of section 402(e)(4)(A) of the Internal Revenue Code if that lump sum distribution is subject to tax under section 402(e), and (2) subtract from federal adjusted gross income any amounts that were included in that sum as recovery of items previously deducted as an itemized bad debt, prior tax, or delinquency deduction[126] from federal adjusted gross income.[127]

3. Property Taxes.—During the 1977 Special Session, Public Law Number 5[128] was enacted, which rewrote much of the law concerning ad valorem property tax levy limits. The Boy Scouts and the Girl Scouts were added to the groups exempt from tangible personal property tax under Indiana Code section 6-1.1-10-25.[129] The property tax assessment date for mobile homes was changed from March 1 to January 15,[130] and sellers of mobile homes will, effective January 1, 1978, be required to provide the buyer with the property tax

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[124]*Id.* § 6-2-1-1(m).

[125]*Id.*

[126]I.R.C. § 111.

[127]IND. CODE § 6-3-1-3.5 (Supp. 1977) (amending *id.* § 6-3-1-3.5 (1976)).

[128]Pub. L. No. 5, 1977 Ind. Acts 67 (Special Sess.) (codified in scattered sections of IND. CODE § 6-3.5-1- (Supp. 1977)).

[129]IND. CODE § 6-1.1-10-25(a)(11), (12) (Supp. 1977).

[130]*Id.* § 6-1.1-1-2(2).

clearance permit, which the buyer must have to effect a transfer of title.[131]

Formerly, township assessors were required to examine the personal property, books, and records of persons who failed to file required personal property tax returns.[132] Under a new enactment, the assessors have the discretion to make the examinations previously noted, and as an alternative to the examination procedure, the assessors may now estimate the value of personal property held by a delinquent taxpayer and issue a notice based on the estimate, to which the taxpayer may respond by filing a late return.[133] While the assessors were given some leeway in their duties by the aforementioned act, another act of the 1977 General Assembly imposed upon the assessors the requirement of competitive bidding before a professional appraiser may be selected to assist with reassessment.[134] The new provision does, however, extend the time within which the assessor must mail notice to taxpayers of reassessed valuations from thirty to ninety days. The enactment also requires the county board of review to process petitions for reassessment within ninety days of receipt.

The property tax deduction for rehabilitated residential property was increased and extended by the 1977 General Assembly.[135] Owners of rehabilitated residential property may now deduct the lesser of (1) the total increase in assessed valuation resulting from the rehabilitation or (2) $3,000 per rehabilitated dwelling unit from the assessed value if increased by reason of the rehabilitation.[136] The new enactment requires assessing officials to notify owners of reassessments occasioned by rehabilitation and of the property tax deductions available to owners of rehabilitated property.[137] The maximum assessed value limitations for property to qualify for this deduction were likewise increased.[138]

A special property tax deduction for rehabilitation or redevelopment of real property in urban development areas was added by the 1977 General Assembly.[139] The enactment authorizes the commissioners of the department of redevelopment of a consolidated first class city (Indianapolis), or a second class city, to establish urban

[131]*Id.* § 6-1.1-7-10.4. The act also imposes a $100.00 fine on sellers who do not provide the clearance permit.

[132]*Id.* § 6-1.1-3-15 (1976) (amended 1977).

[133]*Id.* § 6-1.1-3-15 (Supp. 1977).

[134]*Id.* § 6-1.1-4-18.

[135]*Id.* § 6-1.1-12-18 (amending *id.* § 6-1.1-12-18 (1976)).

[136]*Id.* § 6-1.1-12-18(a)(1), (2).

[137]*Id.* § 6-1.1-12-21.

[136]*Id.* § 6-1.1-12-18(d).

[139]*Id.* §§ 6-1.1-12.1-1 to -6.

development areas pursuant to statutory procedures applicable in other legal areas,[140] and extends a five-year property tax deduction based on the increase in assessed valuation caused by rehabilitation or redevelopment of real property located in the designated area.[141]

The 1977 General Assembly removed the $2,000 limit on the property tax deduction for solar heating or cooling units and extended the scope of the deduction to include mobile homes.[142] The same enactment mandated the State Board of Tax Commissioners to promulgate rules and regulations for determining the value of such systems.

4. Tax Procedure.—The 1977 General Assembly worked a number of procedural changes in Indiana tax law. Most of the procedural changes implemented during the survey period are technical in nature and are worthy of passing comment, although some of the enactments may have significant impact on state tax law practices.

In cases where notice is required to be given to a taxpayer of official action regarding the assessment of tangible personal property, that notice must, under a new enactment, inform the taxpayer of (1) his opportunity for review of the assessment, and (2) the procedures which must be followed in order to secure the review.[143] Upon such review, under Indiana Code section 6-1.1-15-2,[144] the county board of review must list in writing the reasons upon which its final determination is based. When the county board of review is required to give a taxpayer notice of its action regarding the assessment of tangible personal property, the same principles of informing him of the opportunity for review and the procedures that must be followed in order to obtain review of the assessment decision as are applicable to the initial action apply.[145] Likewise, the State Board of Tax Commissioners must, upon its determination with regard to such assessments, inform the taxpayer of the reasons for its decision and the manner by which judicial review may be obtained.[146]

The legislature also worked numerous changes in deadlines, fees, and notices under the property tax laws. The earliest date upon which a county treasurer may now send written demands for delinquent personal property taxes is November 10.[147] The fee for making such demand was raised from $1 to $3.[148] The charge for selling

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[140] *Id.* § 6-1.1-12.1-2.

[141] *Id.* §§ 6-1.1-12.1-3 to -4.

[142] *Id.* § 6-1.1-12-26(a) (amending *id.* § 6-1.1-12-26 (1976)).

[143] *Id.* § 6-1.1-15-1.

[144] *Id.* § 6-1.1-15-2.

[145] *Id.* § 6-1.1-15-3(a).

[146] *Id.* § 6-1.1-15-4(a).

[147] *Id.* § 6-1.1-23-1. Formerly, the first day upon which such notices could be sent was after the first Monday in November. *Id.* § 6-1.1-23-1 (1976) (amended 1977).

[148] *Id.* § 6-1.1-23-7(a)(1) (Supp. 1977).

real property in satisfaction of delinquent property taxes or special assessments was increased from $5 to 10.[149] That $10 charge along with all delinquent property taxes and special assessments on the real property involved must be paid before a tax sale of the property may be avoided.[150] If, however, the delinquent taxes and special assessment are paid before the first publication of the notice of sale, then the owner-taxpayer is not required to pay the $10 charge.[151] If such notice is published, the county auditor must now include in it a statement of the approximate location of each parcel of realty eligible for sale.[152]

Two procedural changes were worked in the intangibles tax law. A taxpayer who uses a fiscal year for income tax purposes may use the same reporting period for his intangibles tax return.[153] The former lien provisions of the intangibles tax law were eliminated and replaced by a new lien procedure similar to that applicable to the adjusted gross income tax.[154]

Several technical changes were effected by the legislature regarding state income tax procedure. Quarterly returns are now required only for taxpayers whose tax for any particular quarter exceeds $250.[155] The interest rate applicable to late returns or refunds was raised to eight percent from six percent.[156]

Separate state returns are now required of husband and wife taxpayers when they file separate federal income tax returns.[157] Declarations of estimated tax for those taxpayers with income not subject to withholding are now required where that amount of income not subject to withholding exceeds $5,000. Formerly, the minimum was $2,000. That declaration requirement is inapplicable in cases where the estimated tax liability can be reasonably expected to be less than $100.

Nonresident individual and resident corporate taxpayers must, effective January 1, 1978, notify the Department of State Revenue of any modifications of federal income tax returns or liability within 120 days of the modification.[158]

The twenty-five percent omission rule[159] applicable to federal in-

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[149] *Id.* § 6-1.1-24-2(3)(iv).

[150] *Id.* § 6-1.1-24-5(d).

[151] *Id.*

[152] *Id.* § 6-1.1-24-2.1.

[153] *Id.* § 6-5.1-6-1(b)(2).

[154] *Id.* § 6-5.1-9-5 (amending Pub. L. No. 84, § 1, 1977 Ind. Acts 416).

[155] *Id.* § 6-2-1-15(b). Formerly, quarterly returns were required when the tax liability for a quarter exceeded $25. *Id.* § 6-2-1-15(b) (1976) (amended 1977).

[156] *Id.* §§ 6-2-1-15(d), -16(b) (Supp. 1977).

[157] *Id.* § 6-3-4-2(e).

[158] *Id.* § 6-3-4-6.

[159] I.R.C. § 6501(e)(1)(A).

come tax is now a part of state tax practice. By the new statute, the standard three-year statute of limitations does not apply when a taxpayer omits an amount properly includible in his gross income that is in excess of twenty-five percent of the amount of gross income stated in the return.[160] In such cases, a six-year statute of limitations applies.[161]

In what could prove to be a very significant enactment, inasmuch as the gross income tax regulations are often altered, the 1977 General Assembly placed an effective restriction on the applicability of gross income tax regulations. Beginning on May 26, 1977, all changes in the interpretations of the gross income tax law by the Department of Revenue that could increase a taxpayer's liability under the gross income tax law must be stated in rules or regulations duly promulgated in the manner by which other state administrative agencies must proceed.[162] Furthermore, changes in departmental interpretation of the gross income tax law that could result in an increase of a taxpayer's gross income liability may in no event take effect prior to the date on which such change is duly promulgated in a rule or regulation.[163]

XVII. Torts

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*Lynn Brundage***

As has been the case for the past few years, the most dramatic developments in the law of torts have taken place in the products liability area. Those developments are thoroughly discussed in a recent symposium in the *Indiana Law Review*[1] and in another article in this Survey. The purpose of this review is to discuss the "traditional" tort cases decided during the survey period that are of interest to the practitioner and the scholar, either because of their

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[160]IND. CODE § 6-3-6-2(a) (Supp. 1977) (amending *id.* § 6-3-6-2 (1976)).

[161]*Id.*

[162]*Id.* § 6-2-1-34(d). Rules and regulations are "duly promulgated" when the procedure outlined in *id.* §§ 4-22-2-1 to -11 (1976) is followed.

[163]*Id.* § 6-2-1-34(d) (Supp. 1977).

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[1]*See generally Symposium: 1977 Products Liability Institute,* 10 IND. L. REV. 753 (1977).